

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27

XCEL ENERGY¹,

Employer,

and

Case No. 27-RC-8152

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL NO. 111,

Petitioner.

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Undersigned.

Upon the entire record in this proceeding, the Undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

¹ The parties agreed during the course of the hearing in this matter to amend the petition and other formal documents to reflect the correct name of the Employer as Xcel Energy.

2. The parties stipulated, and I find, that Xcel Energy f/k/a Public Service Company of Colorado (herein, the Employer) is a Minnesota corporation and a public utility with a place of business in Denver, Colorado. The Employer is engaged in the provision of gas and electrical service to commercial and residential consumers in 12 states, including Colorado. Annually, the Employer receives gross revenues valued in excess of \$250,000 from its business operations and purchases and receives at its Colorado facilities goods and materials valued in excess of \$5,000 directly from points outside the State of Colorado. I find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and I further find that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated, and I find, that International Brotherhood of Electrical Workers, Local No. 111 (herein, the Petitioner) is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of section 9(c)(1) and Section 2(6) and (7) of the Act.

STATEMENT OF THE CASE

A. Background

As noted above, the Employer is a public utility company that operates in 12 states, including Colorado. It provides gas and electric service to residential and commercial customers. The Employer serves approximately 75 percent of the population

of the State of Colorado, mostly along the Colorado Front Range and in the larger population centers.

Since August 23, 1946, the Petitioner has represented the Employer's Operating, Production, and Maintenance employees, in a Colorado statewide unit (herein, the OP & M unit) of approximately 2,600 employees. The collective bargaining agreement between the parties, which was initially effective August 23, 1946, has been amended numerous times throughout the years. The most recent addendum is effective until May 31, 2003. The Petitioner seeks an election under the procedures established by the Board in *The Globe Machine and Stamping Co.*, 3 NLRB 294 (1937), to determine whether the two gas standards technicians desire representation by the Petitioner as part of the existing OP & M unit. See also, *Armour & Co.*, 40 NLRB 1333 (1942).

The Petitioner has never represented the two gas standards technicians at issue herein. The gas standards technicians are essentially responsible for preparing documentation for the Employer's Gas Standards Manual, evaluating new material and equipment, analyzing material and equipment failures, conducting polyethylene (herein, PE) fusion testing and qualification, PE program management, utilization support and special projects.

The Petitioner argues that the two gas standards technicians have an extensive community of interest with employees in the bargaining unit. The Employer does not contend that the two gas standards technicians are ineligible for protection under the National Labor Relations Act, and, in fact, joined in a stipulation with the Petitioner that the only employees eligible to vote in an election resulting from the hearing in this matter are the two gas standards technicians discussed below. However, the Employer argues

that the gas standards technicians do not share a sufficient community of interest with the existing 2,600 employees in the OP & M unit and that these two employees would lose their identity should they be included in that unit. Thus, the Employer argues that, if the two gas standards technicians desire representation by the Petitioner, it should be in a separate unit, as they do not share a sufficient community of interest with the OP & M unit.

B. Relevant Facts

Mark Nolan, who reports to the Director of Gas Asset Management, has been the Employer's Manager of Gas Standards and Technology since approximately 1992. Nolan is responsible for supervising James De Belle and Larry Paul Dashner, the two gas standards technicians at issue. Nolan has no OP & M employees under his supervision. Although there is no current evidence of common supervision among the gas standards technicians and the bargaining unit, Nolan testified that the Employer is presently embarked in a restructuring and that the organization remains in a state of flux. The record discloses that as recently as November 2001, the gas standards technicians and the corrosion protection employees, who are in the OP & M bargaining unit, were supervised by the same second level manager.

De Belle and Dashner are employed at the Lipan Distribution Center (herein, the LDC), where bargaining unit employees, such as storekeepers, service fitters, associates, corrosion prevention employees and a welder tester, are also employed. Except for the service fitters, who do extensive field work and who work at the LDC less than a majority of their time, all of these employees primarily work at the LDC. The LDC is a two-story office building with offices and cubicles located on Lipan Street in Denver,

Colorado. De Belle and Dashner are assigned to work in cubicles on the second floor at the LDC. Associates and corrosion protection employees are also located on the second floor. However, most bargaining unit employees working at the LDC are assigned to work on the first floor. The record shows that bargaining unit employees and the gas standards technicians have regular face-to-face contact at the LDC. The LDC houses a lunchroom, which is also used as a breakroom and which is accessible to both bargaining unit and nonbargaining unit employees.

There is an adjacent, older building next to the LDC that houses a shop, laboratory and storage space. De Belle and Dashner often work in the laboratory where a significant portion of their work is performed. The record discloses that at least some employees in the OP & M unit also work a portion of their workdays in a laboratory. The record also discloses that electric metrology lab specialists, who have been incorporated into the bargaining unit,² also perform some of their work for the electric side of the Employer's operation in a different laboratory.

De Belle and Dashner are paid on an hourly basis. De Belle earns \$19.91 an hour and Dashner earns approximately \$21.06 per hour. The record evidence is clear that the wages of the two gas standards technicians are in a range that is within that of employees in the bargaining unit. For example, service fitters earn \$24.77 per hour under the contract and welders earn a contractual rate of \$24.28 per hour.

In addition, both gas standards technicians work hours that are similar to those of bargaining unit employees. De Belle works Mondays through Fridays from 7:00 a.m. to

² I take administrative notice that this occurred on December 19, 2001, pursuant to an *Armour Globe* election in Case 27-RC-8143.

3:30 p.m. Dashner is on the same schedule from Monday through Thursday. On Fridays, Dashner works from 6:30 a.m. to 3:00 p.m. Employees represented by the Petitioner are eligible to work those same or virtually identical shifts. Nolan testified that those hours are not tied to the bargaining unit and that the two gas standards technicians have the flexibility to set their own hours within limits. The fringe benefits of nonrepresented employees, including Dashner and De Belle, differ from those of bargaining unit employees, whose fringe benefits are bargained collectively.

Nolan testified that the qualifications needed by gas standards technicians to perform their jobs include a high school or G.E.D. diploma, experience in the gas utility industry, writing skills, and basic mechanical and electronic aptitude. De Belle has a high school degree plus one year of college. He completed a correspondence course and has obtained on-the-job training. De Belle was employed as a bargaining unit storekeeper for eight years before transferring to his current position. Dashner has approximately 20 years of field experience and a two-year Associate Degree in electronics. Bargaining unit employees are generally required to have a high school diploma and some basic skills in the work they will be performing. Unlike OP & M unit employees, gas standards technicians are not required to go through an apprenticeship program. Their training is mainly on-the-job.

The two gas standards technicians are responsible for maintaining the Employer's Gas Standards Manual. The Employer's evidence indicates that De Belle spends 45% of his workday and Dashner 5% of his time working on the Gas Standards Manual. The Gas Standards Manual is designed for use by the bargaining unit employees in the field. Record evidence reflects that approximately 90% of the materials in this manual are

eventually utilized by OP & M unit employees. Other bargaining unit employees are also required to do technical writing as a part of their job duties. For example, lab specialists, who are represented by the Petitioner, compile and write manuals on the electric side. Additionally, the record reflects that bargaining unit employees are regularly called upon to revise the Employer's safety manual that is considered to be "the Bible" by gas, electric and other production bargaining unit employees.

De Belle is also responsible for coordinating and writing specifications for another Employer manual, the 350 page Gas Materials Manual, that is used by both bargaining and non-bargaining employees. Employees in the bargaining unit who rely on this manual include bargaining unit storekeepers and service fitters. A significant portion of De Belle's worktime is spent updating and preparing the Gas Materials Manual.

Nolan testified that both De Belle and Dashner are responsible for evaluating new materials, equipment and technologies for use in the gas system. In that regard, De Belle spends approximately 15% of his time evaluating new materials and equipment that are used in the Employer's gas department. Dashner spends approximately 30% of his time performing evaluations of new gas meters, regulators and polyethylene pipe.³

Dashner's work in regard to the investigation of new products, materials, and technologies involves both the regulator and meter area and the PE fusion area. This task takes up approximately 30 % of his total work time. Nolan testified that of this portion of Dashner's workday, approximately 30% is spent on paper evaluation, 30% is spent in the lab, 30% is spent writing up the report, and 10% is spent in the field. Of the time spent by Dashner in the field investigating new technologies, Nolan testified that Dashner

³ Similarly, bargaining unit employees classified as electric metrology specialists perform the similar evaluation work for the Employer on the electric side of the Employer's operation.

would spend half of that time talking with field employees and the other half summarizing their input. When he goes out into the field, Dashner has contact with bargaining unit employees who are actually working with the new products and materials and implementing new technologies. The record reflects that OP & M bargaining unit employees also may call Dashner concerning problems they are having, in which case Dashner tells them to fill out a technical sheet that is eventually sent back to him through the inter-company mail. Dashner considers the feedback on these technical sheets before making a decision regarding whether he is going to utilize new products or materials or apply a new technology in the future. The record discloses that Dashner also communicates with these employees through e-mails, cell phones and faxes.

Dashner also has significant duties related to annually qualifying and certifying bargaining unit employees as required by the Department of Transportation for the joining of polyethylene gas pipes, a process referred to as PE fusion. PE fusion testing comprises approximately 35% of Dashner's job. In performing the PE fusion testing, Dashner conducts a destructive test using a tinsel puller, hydraulic vices and a calibrated impact hammer, tools that are not commonly used by bargaining unit employees.⁴ While no bargaining unit employees perform the same type of PE fusion testing as Dashner, Matt Verwys, a bargaining unit welder tester, works in the gas mechanical shop at the LDC. Verwys is responsible for conducting tests similar to those conducted by Dashner and certifying welding employees who work in power plants, the gas department, and in the transportation department. Dashner also frequently has contact with other division

⁴ The record reflects that Dashner also uses common tools such as pliers, wrenches, etc., that are used by bargaining unit employees.

testers, who are usually lead fitters, a classification in the bargaining unit. Dashner instructs the lead fitters on how to proctor tests.

De Belle testified that he has daily contact with storekeepers by phone, e-mail, fax, and in person with those assigned to work at the LDC. Storekeepers are located at almost all of the Employer's service centers and power plants. Additionally, De Belle has personal contact with service fitters who will bring failed materials to him to advise about specific problems. Service fitters may also contact De Belle for assistance in obtaining nonstandard materials or if they have received the wrong materials. De Belle also has contacts with associates (a classification covered by the OP & M contract) at the LDC if they need assistance in getting numbers for coded items. Similarly, De Belle is in regular contact with corrosion protection and tool room employees, who are in the OP & M unit.

De Belle may also have regular contact with bargaining unit employees when he conducts investigations and analysis regarding material failures. Such investigations may result in a determination that a bargaining unit employee was at fault for a material failure. Certain tools that De Belle uses in analyzing material failures include calipers, density gauges, and a PI tape, which are not tools typically used by bargaining unit employees. While the record is not explicit in this regard, without question, De Belle also uses common tools such as screwdrivers, hammers, wrenches, pliers, etc. in the performance of his duties.

ANALYSIS AND CONCLUSION

As stated above, the Petitioner seeks an *Armour Globe* election to have the gas standards technicians vote as to whether or not they wish to be represented as part of the

existing OP & M Bargaining Unit. The Petitioner argues that the two gas standards technicians have an extensive community of interest with employees in the bargaining unit. On the other hand, the Employer contends that the petitioned-for unit lacks a sufficient community of interest with the OP & M unit to allow an *Armour Globe* election and that the only appropriate bargaining unit for the gas standards technicians is a stand-alone unit.⁵

In the case under consideration, the parties have stipulated that the appropriate unit determined herein is appropriate for collective bargaining.⁶ Thus, the only issue to be determined is whether the employees in this stipulated appropriate unit share a sufficient community of interest with employees in the OP & M unit already represented by the Petitioner to be included in that bargaining unit, should the election to be directed result in a vote in favor of the Petitioner.

In deciding the appropriateness of holding a self-determination election, it is necessary to determine the extent to which the employees to be included share a community of interest with the unit employees, as well as whether they constitute an identifiable, distinct segment as to constitute an appropriate voting group. *Warner-Lambert Co.*, 298 NLRB 993 (1990). Among the factors relied upon by the Board in *Warner-Lambert* to determine that a sufficient community of interest existed between the petitioned-for employees and the employees already represented were compensation, work

⁵ In *Globe*, the Board found that either the separate bargaining units sought by the petitioning labor organization or the one overall unit sought by an intervening labor organization would be appropriate for collective bargaining. The Board found that either arrangement would result in appropriate bargaining units and concluded that the determining factor should be the desire of the employees themselves. In *Armour*, the Board held that separate units could be added to the unit historically represented by a petitioning labor organization if the employees chose to do so.

⁶ Even in the absence of a stipulated unit, the evidence reflects that the unit sought is an appropriate unit. *Kalamazoo Paper Box Corp.*, 136 NLRB 134 (1962); *Overnite Transportation Co.*, 322 NLRB 723 (1996).

hours, common supervision, job qualifications and skills, work contact, interchange of employees, functional integration, and bargaining history. I find that overall these factors favor affording the petitioned-for employees herein the opportunity to determine whether they want to be represented by the Petitioner as part of the existing OP & M bargaining unit.

Although the Employer contends that the gas standards technicians should be excluded from the OP & M bargaining unit because they do not work identical hours as bargaining unit employees, because they can set their own schedules, and because they receive fringe benefits that are different than those received by bargaining unit employees, the record evidence provides an insufficient basis to warrant their exclusion from the existing bargaining unit based See *K.G. Knitting Mills*, 320 NLRB 374 (1995). In regard to these issues, the work schedules of the gas standards technicians are comparable to those of many employees in the OP & M unit. Moreover, the Board has directed self-determination elections in circumstances where the hours of the employees involved were different. See, *Warner-Lambert Co.*, supra. Further, although there is a difference in terms of the fringe benefits received by the gas standards technicians and the OP & M bargaining unit employees, this results from the fact that the benefits of the OP & M unit are determined through collective bargaining. It is logical to expect that fringe benefits for employees who previously have been unrepresented to differ from the fringe benefits of employees in an existing unit that has been subject to collective bargaining for 55 years. While the fringe benefit packages for the two groups may differ, there is no record evidence that the relative value (or cost to the Employer) of the fringe benefit packages in question are substantially different. Importantly, the record is clear that the wages

received by the two gas standards technicians are well within the salary range for employees covered by the parties' collective bargaining agreement.

The Employer also argues that the gas standards technicians possess a higher skill level than members of the OP & M unit. However, the record does not establish that the gas standards technicians are required to possess a level of skill sufficient to preclude their being placed in the same unit with the employees already represented by the Petitioner. Indeed, Manager of Gas Standards and Technology Nolan testified that gas transmission specialists technicians are only required to possess a high school diploma or G.E.D., experience in the gas utility industry, writing skills, math skills, and basic mechanical and electronic aptitude. These skills are not materially different than those required for bargaining unit employees. Additionally, the evidence establishes that many of the functions of the gas standards technicians, such as testing, performing work in the laboratory, and testing new materials and equipment are similarly performed by bargaining unit employees in other departments. Thus, the evidence establishes that the nature of the skills and functions of the gas standards technicians and employees in the OP & M bargaining unit are similar. See *J.C. Penney Co.*, 328 NLRB 766, 767 (1999).

The Employer further contends that there is a lack of common supervision that precludes the incorporation of the gas standards technicians into the existing OP & M bargaining unit. While the record is clear that the two employees at issue herein are supervised by someone who does not supervise any employees who are currently covered by the OP & M contract, this factor is not dispositive. See, *Warner-Lambert Co.*, *supra*. Additionally, the evidence indicates that as recently as November 2001, a second level

manager was responsible for supervising both bargaining unit and the petitioned-for employees. Thus, there is some history of a commonality of supervision.

The gas standards technicians are located at the LDC, the same complex where numerous classifications of bargaining unit employees also work. As discussed above, the evidence shows that the gas standards technicians and employees in the OP & M bargaining unit have regular and consistent contact with each other and that their work is functionally integrated. Further, there is also evidence of employee interchange as demonstrated by the fact that De Belle was a bargaining unit storekeeper before being transferred to work as a gas standard technician.⁷

Based upon the foregoing, and the record as a whole, I find that the petitioned-for unit shares a sufficient community of interest with the OP & M unit to warrant an election allowing the petitioned-for employees to vote on whether to be included in the OP & M unit.⁸

Accordingly, I direct an election as follows:

All full time and regular part time gas standards technicians in the gas standards lab at the LDC facility; excluding professional employees, confidential employees, guards, and supervisors as defined in the Act, and all other employees.

If a majority of the valid ballots in the election are cast for the Petitioner, the employees will be deemed to have indicated their desire to be included in the existing OP

⁷ I find the Employer's argument on brief that the gas standards technicians should remain as a separate bargaining unit because they will be "subsumed" by the much larger OP & M unit to be unpersuasive. It is for the employees to determine through the self-determination election process whether or not they desire such inclusion.

⁸ *John P. Scripps Newspaper Corp.*, 329 NLRB 854 (1999), and *Ryder Integrated Logistics, Inc.*, 329 NLRB 1493 (1999), cited on brief by the Employer for the proposition that the fringe group must have a sufficient community of interest with the existing unit and have no separate identity are not controlling, as those matters dealt with unit clarification and accretion issues.

& M bargaining unit currently represented by Petitioner, and that labor organization may bargain for the employees as part of that unit. If a majority of ballots are cast against representation, the employees will be deemed to have indicated the desire to remain unrepresented. In that event, a certification of results of election reflecting that no labor organization represents the petitioned-for employees will be issued. See *The Globe Machine and Stamping Co.*, supra.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Undersigned among the employees in the Unit found appropriate at the time and place set forth in the Notice of Election to issue subsequently, subject to the Board's Rules and Regulations.⁹ Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an

⁹ Your attention is directed to Section 103.20 of the Board's Rules and Regulations, which provides that the Employer must post the Board's Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL NO. 111**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the *full* names and addresses of all the eligible voters shall be filed by the Employer with the Undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, National Labor Relations Board, 700 North Tower, Dominion Plaza, 600 Seventeenth Street, Denver, Colorado 80202-5433 on or before February 11, 2002. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operated to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board,

addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **February 19, 2002**. In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

Dated at Denver, Colorado this 4th day of February 2002.



B. Allan Benson, Regional Director
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